

**PERBUATAN MELAWAN HUKUM KARENA TIDAK DIPENUHINYA HAK OLEH
INVESTEES TERHADAP INVESTOR DALAM SUATU PERJANJIAN INVESTASI
(Studi Putusan Pengadilan Negeri Denpasar Nomor 158/Pdt.G/2022/PN.Dps)**

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ABSTRAK

Tujuan penelitian ini untuk menganalisis pertimbangan hakim dalam mengkualifikasikan kriteria perbuatan melawan hukum dalam Putusan Pengadilan Negeri Denpasar Nomor 158/Pdt.G/2022/PN.Dps dan untuk menganalisis pertimbangan hakim dalam mengabulkan tuntutan ganti kerugian perbuatan melawan hukum dalam Putusan Pengadilan Negeri Denpasar Nomor 158/Pdt.G/2022/PN.Dps. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Spesifikasi penelitian analisis preskriptif, sumber data sekunder dengan metode penyajian dalam bentuk teks naratif dan disusun secara sistematis menggunakan metode analisis normatif kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa Majelis Hakim mempertimbangkan perbuatan Tergugat telah melakukan perbuatan melawan hukum tanpa mengkualifikasikan unsur mana yang dilanggar. Menurut pendapat penulis, perbuatan Tergugat telah melakukan perbuatan melawan hukum yaitu melanggar hak subyektif Penggugat mengenai hak-hak atas harta kekayaan Penggugat (hak atas uang investasi yang sudah dibayarkan dan hak atas bunga hasil investasi), dan melanggar unsur kepatutan dalam pergaulian masyarakat mengenai diri atau barang orang lain karena perbuatan Tergugat terbukti bertentangan dan sangat merugikan kepentingan Penggugat. Majelis Hakim mengadili sendiri dengan mengabulkan ganti rugi materiil lebih dari yang dituntut oleh Penggugat yaitu sebesar Rp 3.087.450.000. Penggugat telah memenuhi syarat-syarat gugatan ganti kerugian Pasal 1365 KUH Perdata. Bentuk ganti kerugian akibat dari perbuatan melawan hukum yang dibebankan kepada Tergugat termasuk kedalam ganti rugi kompensasi/actual, Tergugat memberikan sejumlah upah atau pembayaran kepada Penggugat atas dan sebesar kerugian yang benar-benar telah dialami oleh Penggugat dari adanya suatu perbuatan melawan hukum. Jenis ganti kerugian menurut Pasal 1243 KUH Perdata, kerugian yang dikabulkan oleh Majelis Hakim tersebut, termasuk kedalam rugi (*schaden*) yaitu kerugian yang diderita Penggugat atas sejumlah uang yang telah disetorkan kepada perusahaan Tergugat sebesar 72.000 Euro atau sejumlah Rp 1.200.000.000 (satu miliar dua ratus juta rupiah), aspek biaya (*kosten*) Penggugat menderita kerugian berupa segala biaya yang telah disetorkan kepada perusahaan Tergugat, Penggugat menderita segala keuntungan dari investasi Penggugat yang telah diberikan kepada perusahaan Tergugat.

Kata kunci : ganti rugi, perbuatan melawan hukum, investasi

**UNLAWFUL ACTS DUE TO THE NON-FULFILLMENT OF THE RIGHTS OF THE
INVESTEE AGAINST INVESTORS IN AN INVESTMENT AGREEMENT
(Study of the Denpasar District Court Decision Number 158/Pdt.G/2022/PN.Dps)**

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ABSTRACT

The purpose of this study is to analyze the judge's considerations in qualifying the criteria for unlawful acts in the Denpasar District Court Decision Number 158/Pdt.G/2022/PN.Dps and to analyze the judges' considerations in granting the claim for compensation for unlawful acts in the Denpasar District Court Decision Number 158/Pdt.G/2022/PN.Dps. This study uses a normative juridical method with a statutory approach and a case approach. The research specification of prescriptive analysis, secondary data sources with a presentation method in the form of narrative texts and systematically arranged using qualitative normative analysis methods.

The results of the research and discussion show that the Panel of Judges considers that the Defendant's actions have committed unlawful acts without qualifying which elements were violated. In the author's opinion, the Defendant's actions have committed unlawful acts, namely violating the Plaintiff's subjective rights regarding the rights to the Plaintiff's assets (the right to the investment money that has been paid and the right to interest on investment results), and violating the element of propriety in public relations regarding himself or other people's goods because the Defendant's actions are proven to be contrary to and very detrimental to the interests of the Plaintiff. The Panel of Judges tried itself by granting material damages more than demanded by the Plaintiff, which amounted to Rp 3,087,450,000. The plaintiff has fulfilled the requirements of the compensation lawsuit under Article 1365 of the Civil Code. The form of compensation resulting from unlawful acts charged to the Defendant is included in compensation/actual damages, the Defendant provides a certain amount of wages or payments to the Plaintiff and is equal to the losses that have actually been experienced by the Plaintiff from an unlawful act. The type of compensation according to Article 1243 of the Civil Code, the losses granted by the Panel of Judges, including losses (schaden), namely losses suffered by the Plaintiff for the amount of money that has been deposited to the Defendant's company in the amount of 72,000 Euros or an amount of Rp 1,200,000,000 (one billion two hundred million rupiah), the cost aspect (kosten) of the Plaintiff suffers losses in the form of all costs that have been deposited to the Defendant's company, The Plaintiff suffers all profits from the Plaintiff's investment that has been given to the Defendant's company.

Keywords : compensation, unlawful acts, investment